

SUPREME COURT OF APPEALS OF WEST VIRGINIA

State of West Virginia v. Norman Rattliff, Jr.

State v. Rattliff · No. 14-0886 · Decided September 18, 2015

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed the Wood County Circuit Court’s denial of Norman Rattliff, Jr.’s motion to correct his sentence and obtain additional credit for time served. The court held that the credit was properly applied for purposes of the aggregate minimum term of the consecutive sentences, declined to reach the ineffective-assistance claim because the record was insufficiently developed, and found that the defendant waived his challenge to the handling of his motion to withdraw his guilty plea.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Margaret L. Workman; Robin Jean Davis; Brent D. Benjamin; Menis E. Ketchum; Allen H. Loughry II
JURISDICTION	West Virginia
DECIDED	September 18, 2015
DOCKET	14-0886
DISPOSITION	affirmed
PROCEDURAL POSTURE	Rattliff appealed the Wood County Circuit Court's order denying his pro se motion to correct his sentence and obtain additional credit for time served after he pleaded guilty to forgery, second-degree robbery, and robbery.
STANDARD OF REVIEW	Under State v. Head, review of a Rule 35 motion is for abuse of discretion, underlying factual findings are reviewed for clear error, and questions of law and statutory or rule interpretation are reviewed de novo.
PRECEDENTIAL VALUE	Published memorandum decision; the opinion states that it is issued under West Virginia Rule of Appellate Procedure 21.
PARTIES	Norman Rattliff, Jr. v. State of West Virginia

TOPICS

sentencing

plea bargaining

ineffective assistance

preservation of error

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether the circuit court erred by failing to award a separate credit for presentence confinement against the consecutive forgery sentence.
2. Whether the court could review Rattliff's ineffective-assistance-of-counsel claims on direct appeal.
3. Whether the circuit court erred by failing to conduct a separate hearing before sentencing on Rattliff's motion to withdraw his guilty plea.

HOLDINGS

1. A defendant's presentence-confinement credit is applied to the aggregated minimum term of consecutive sentences for purposes of calculating parole eligibility, rather than separately to each consecutive sentence. Because Rattliff's 448 days of credit were fully used against the minimum term of the robbery sentence, he received all credit to which he was entitled.
2. The court declined to reach the merits of Rattliff's ineffective-assistance claims because the appellate record was insufficiently developed; direct appeal did not bar a later habeas corpus proceeding addressing those claims.
3. Rattliff waived appellate review of whether the circuit court should have held a separate hearing on his motion to withdraw his guilty plea because he expressly withdrew that motion during the sentencing hearing and chose to proceed with sentencing.

KEY QUOTATIONS

"In reviewing the findings of fact and conclusions of law of a circuit court concerning an order on a motion made under Rule 35 of the West Virginia Rules of Criminal Procedure, we apply a three-pronged standard of review." (at 2)

"For purposes of calculating a defendant's parole eligibility date, credit for time served by the defendant prior to being sentenced should be applied to the aggregated minimum term of all the consecutive sentences combined." (at 3)

"Therefore, we decline to address the merits of petitioner's ineffective assistance of counsel claim." (at 5)

FACTUAL BACKGROUND

Rattliff was indicted on eleven criminal counts and later entered a negotiated guilty plea to forgery, second-degree robbery, and robbery. The plea agreement was corrected during the plea hearing to reflect the statutory robbery penalty, consecutive treatment of the forgery sentence, and the absence of a thirty-year cap. At sentencing, the circuit court credited 448 days of presentence confinement against the concurrent robbery sentences but awarded no separate credit against the consecutive forgery sentence. Rattliff later sought

correction of the sentence, asserted ineffective assistance, and challenged the handling of his motion to withdraw his plea.

PROCEDURAL HISTORY

A grand jury indicted Rattliff on eleven counts. Following plea negotiations, the parties modified the plea agreement during the plea hearing, and Rattliff pleaded guilty to forgery, second-degree robbery, and robbery; the remaining charges were dismissed. The circuit court imposed concurrent sentences for robbery and second-degree robbery, a consecutive sentence for forgery, and credited 448 days of presentence confinement against the robbery sentences. The circuit court denied Rattliff's Rule 35 motion seeking additional credit against the forgery sentence, and the Supreme Court of Appeals affirmed.

DISPOSITION

affirmed

CASES CITED

- State v. Head, 198 W. Va. 298, 480 S.E.2d 507 (1996)
- State v. Broughton, 196 W. Va. 281, 470 S.E.2d 413 (1996)
- State v. McClain, 211 W. Va. 61, 561 S.E.2d 783 (2002)
- State v. Eilola, 226 W. Va. 698, 704 S.E.2d 698 (2010)
- State v. Middleton, 220 W. Va. 89, 640 S.E.2d 152 (2006)
- State v. Miller, 194 W. Va. 3, 459 S.E.2d 114 (1995)
- State v. Triplett, 187 W. Va. 760, 421 S.E.2d 511 (1992)
- State v. Frye, 221 W. Va. 154, 650 S.E.2d 574 (2006)
- Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984)
- State v. Grimmer, 162 W. Va. 588, 251 S.E.2d 780 (1979)
- State v. Petry, 166 W. Va. 153, 273 S.E.2d 346 (1980)
- State v. Salmons, 203 W. Va. 561, 509 S.E.2d 842 (1998)
- State v. Jessie, 225 W. Va. 21, 689 S.E.2d 21 (2009)